## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION NO. 7:14-CR-12-BO-1

NO. 7:15-CV-183-BO

JOSHUA ORLANDO BERNARD,

Petitioner,

)

v.

ORDER

UNITED STATES OF AMERICA,

Respondent.

This matter is before the Court on petitioner's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 [DE 56] and the government's response [DE 60].

Petitioner was sentenced on August 21, 2014, to 96 months with credit for time served and a lifetime term of supervised release. [DE 52]. Petitioner discussed his sentence, particularly the supervised release, with his attorney, Sherri Alspaugh, after the sentencing. [DE 56, 56-1]. Petitioner claims Alspaugh informed him he could appeal and that he told her he wished to do so but that she never returned to discuss the appeal with petitioner, and no notice of appeal was ever entered. *Id.* Consequently, petitioner filed the instant motion. [DE 56]. The government responded that petitioner alleged sufficient facts to state a claim for relief. [DE 60].

Accordingly, the Court will hold an evidentiary hearing on petitioner's claim that his counsel did not file a notice of appeal despite being directed to do so by petitioner. Rule 8(c) of the Rules Governing § 2255 Proceedings requires that the Court appoint counsel to represent petitioner at an evidentiary hearing if he meets the indigency requirements. As petitioner was previously determined to meet the indigency requirements, Raymond Tarlton is APPOINTED to represent petitioner for this evidentiary hearing. 18 U.S.C. § 3006A. Pursuant to Rule 8(c) of the

Rules Governing § 2255 Proceedings, the Court will conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare. Parties will receive specific notice of the hearing at a later date.

## **CONCLUSION**

For the foregoing reasons, the Court will hold an evidentiary hearing as to petitioner's claim that counsel failed to file a notice of appeal despite being directed to do so. The Clerk is DIRECTED to provide a copy of this order to the Federal Public Defender and Raymond Tarlton.

SO ORDERED, this <u>13</u> day of January, 2016.

Tenenel W. Augle TERRENCE W. BOYLE

UNITED STATES DISTRICT JUDGE